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U.S. DISTRICT COURT  
DISTRICT OF NEVADA

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA  
Plaintiff,

**Case No. 2:13-cr-346 KJD-GWF**

**REPLY (OF SEIZED-  
PROPERTY OWNER KARALIS) TO  
UNITED STATES RESPONSE ( Doc. #  
54 ) TO MOTION (Doc. #46) UNDER  
FRCrimP 41(g)**

vs.

KELLY D. CARN,  
Defendants

**COMES NOW THE MOVANT AND INTERESTED PARTY**, George Demetrius Karalis, and files this Reply to the United States RESPONSE TO MOTION (“USRM”) (Doc. # 54), responding to Karalis’s Motion for return of seized property (Doc. #46).

Karalis seeks only those guns not required in evidence in Carn’s criminal proceedings. “(D)efendant’s Rule 41[g] motion should presumptively be granted if the government no longer needs the property for evidence.” (Internal citations omitted). *U.S. v Kriesel* (CA 9, 2013) 720 F.3d 1137 at 1144.

### PACER SYSTEM PROBLEM

Karalis cannot electronically file with this Court— a real disadvantage.

Karalis filed his 41(g) MOTION (Doc. #46). The Defendant filed an OPPOSITION (Doc. #50). The United States (per Andrew Duncan, Esq.) filed its RESPONSE (Doc. #54).

This instant Karalis REPLY responds specifically to Mr. Duncan's #54 RESPONSE.

Karalis also filed a (1-26-15) REPLY TO DEFENDANT'S OPPOSITION, specifically addressing Doc. #50. This 1-26-15 filing is not on Pacer yet, Karalis will refer to it as the "RDO".

Of course, Karalis will refer to the 1-26-15 filing by PACER Document # XXX when a number is assigned.

**EVERY SALE OF A NFA CLASS 3 WEAPON INVOLVES A BAILMENT-FOR-HIRE. PLAINTIFF IS CURRENTLY STUCK IN THIS BAILMENT STAGE.**

The USRM notes that Karalis's civil Complaint appends Bills of Sale that conform to the three (3) or maybe four (4) guns the USRM lists on page 2. The USRM then goes on to nullify any claims Karalis may have, arguing that Karalis is not the "registered owner." The fact is that, under the sales provisions of UCC, Karalis has *title to each gun under the NV-adopted UCC provisions*. He is the *legal* owner under Nevada law, even though he is not (yet) the ATF *registered* owner.

In every private party NFA Class 3 weapons purchase, the *title* of the weapon is determined by state law (*e.g.* Karalis's UCC purchase). ATF usually accepts state-defined title as registrable for the ATF registration (*Form 4*, referred to on pg. 3/ Line 21 of Doc. # 54).

1 In any event, Karalis is certainly the Equitable owner, and will ask as a remedy that the  
2 Court order Carn to do the specific performance act of quitclaiming any interests in those  
3 guns to Karalis, so Karalis can register them with ATF. This would satisfy an ATF Form  
4 4 requisite. "EQUITY TREATS AS DONE THAT WHICH OUGHT TO BE DONE".

5 The USRM confuses *title* to a gun with *registration* of a gun. The USRM (pg. 3) cites  
6 *Felici*, but that case is inapposite. In his civil Complaint (Doc. #1 in 2:12-cv-694), Karalis  
7 attached as Exhibits a number of Bills of Sale and cancelled checks, reflecting his full \$  
8 99,180 prepayment for eight (8) guns and four (4) Beta Magazines.

9  
10 To date, defendants (and now the United States) have dismissed Karalis's claims of  
11 bailment as **some sort of oddity**, almost never addressing that claim, which appears in  
12 the civil Complaint (Fourth Cause of Action). The issue of Bailment is actually  
13 *determinative* herein. A bailment is a *necessary* contractual step in the performance of a  
14 NFA Class 3 firearms sale. It follows that a Bailment is created only after the Buyer takes  
15 title (or otherwise Buyer would have no *res* to bail).

16  
17 In his 41(g) Motion, Karalis has cited UCC authority that a Buyer takes *title* at the  
18 *moment* of purchase and payment. Actual NFA Form 4 registration goes only to the issue  
19 of the right to possess the gun (i.e., to walk out the door of the gunshop with gun in  
20 hand). ATF does not confer *title* on anyone.

21  
22 In citing *Felici*, the USRM misapprehends that Karalis is not the owner of anything  
23 because any guns at issue are registered to The Gun Vault, Inc., and Karalis has never  
24 filed a Form 4.

25  
26 There is no time limit for a Buyer to file the Form 4. In fact, the instant Carn-generated  
27 actions have blocked Karalis was filing Form 4s. And even in ideal circumstances, a  
28 Form 4 is only approved after the ATF processes it and does background checks, which  
often takes many months. During that ATF processing period, any Buyer holds title.

1 An analogy occurs when the local police seize a spouse's guns after the other spouse files  
2 a restraining order against the first spouse for domestic violence. The statutes in most  
3 states allow the guns to be returned when the RO is dissolved.

4 In this example, the police hold the guns in a Bailment, but the title *remains* in the spouse  
5 restrained by the RO. If the spouse is convicted for a crime excluding future possession  
6 of firearms, the states usually allow the convict to have the police transfer the guns to a  
7 federally licensed gun dealer so they can be transferred or sold to an eligible buyer. The  
8 convict is permitted to do so because he/she is still the *title* holder, even though the  
9 conviction strips him/her of the right of *possession*.

10  
11 Another example: Karalis buys a book online from Amazon.com. He pays for it by credit  
12 card (in full) at the moment he is completing the online shopping form. From that  
13 moment on, Amazon is no longer the title holder of that book. Karalis now holds title.  
14 There will be a delay while Amazon processes, packs, and ships the book---delays  
15 occurring over at Amazon. That post-sale period is a Bailment.

16  
17 Karalis holds good UCC *title*, and it is entirely irrelevant whether his purchase was  
18 registered with ATF. His next step is to obtain title of record from Carn (voluntarily or  
19 otherwise), and then fill out the ATF Form 4 paperwork.

20  
21 In simple terms, Karalis is simply a Buyer waiting to pick up his fully paid-up purchase  
22 of eight (8) guns.

23  
24 Karalis is the bailor, and defendant is the bailee. This is a bailment-for-hire because the  
25 contracting parties understood that the Seller would hold onto the guns as a part of the  
26 sales procedure. Again, a bailment is necessary in a Class 3 NFA purchase, since the  
27 customer can never take the gun home unless he/she waits several months while ATF  
28 completes the paperwork (ATF Form 1) and writes to the law enforcement agency where

1 the Buyer resides or has its business—steps required as a condition precedent before the  
2 Seller can permit the customer to take physical possession of the gun.

3 Obtaining a NFA Class 3 weapon requires first a sale (which is governed under UCC),  
4 then a waiting period during which the buyer submits NFA paperwork to the ATF in  
5 order to take custody of the gun. During that ATF application period, the selling dealer  
6 retains possession of the gun—which is a Bailment. It is a bailment for hire because the  
7 retention of the gun by the selling dealer is a necessary step for a private citizen. It is also  
8 “for hire” because the Seller makes money by being the Bailee—or otherwise Seller  
9 could not sell these guns. Exceptions apply to purchases by law enforcement.

10 For this reason, Karalis had no choice in any of the eight (8) transactions but to allow  
11 defendant to continue holding his guns in storage. The point is that Karalis took title  
12 under UCC the moment he purchased the guns. There is no legal waiver of rights or  
13 prejudice to Karalis by allowing defendant to store the guns until Karalis could submit  
14 the Class 3 paperwork to ATF. When buying the guns, Karalis, a California resident, was  
15 contemplating a retirement move to Arizona, where citizens can possess these NFA guns  
16 and where he owns an 80 acre ranch.

17  
18 Karalis is now stuck in this second (Bailment) step. He should be in a position now to  
19 direct Carn to forward the NFA guns to an AZ dealer so Karalis can register them in AZ  
20 with ATF.

21  
22 Carn and his family have disrupted this otherwise-pro-forma process.  
23  
24  
25

26 **YET ANOTHER FRAUD WHILE HE IS ON BAIL ---ALMOST !!**  
27

28 Defendant Carn has admitted already that Karalis is the owner of a seized .380 cal. MAC  
firearm, and Carn’s own Motion for return of seized property (Doc. #30 & parag. e of

1 Carn Affidavit therein). His Affidavit explicitly states his intent to return possession of  
2 that gun to Karalis. This is a flat *admission* by Carn that Karalis is the titled owner of at  
3 least one gun in the seized ATF cache. It is also a declaration against party's (Carn's)  
4 interest--- and therefore all the more probative.

5 The facts will develop, and a fair reading of civil Complaint as it now stands reflects, that  
6 the eight (8) guns were bought *seriatim*. While the dates of their purchases varied, the t/o  
7 was essentially the same. Yet, in attempting to have *most* of the firearms seized by ATF  
8 released to him, Carn executed an Affidavit at Page 5 of Doc. #30 (Def's Motion for  
9 Return of Seized Property).

10 He declares that Karalis owns the .380, but *omits* mention of any other of his eight (8)  
11 purchases. Karalis's Complaint in #2:12-cv-694 alleges that Carn sold him eight (8) guns.  
12

13 The factual context of all of the sales (the t/o) is essentially identical. Karalis would come  
14 into Carn's gun shop. Carn would show Karalis a gun. If Karalis wanted it, he would so  
15 state. Karalis would take physical possession (delivery) of the gun, then take a picture of  
16 it. Karalis would then, by verbal agreement, tell Carn to store it until Karalis could  
17 register the sale with ATF and then take physical custody of the gun. Karalis maintains  
18 the sale was complete at each event under the UCC, and that Karalis's subsequent return  
19 of the gun to Carn constituted a bailment. The only exception is a mini-UZI Group  
20 Industries 9mm gun, which was to be delivered as soon as Carn received it in his shop.  
21

22 When Karalis read the USRM (page 2), he saw the U.S. Attorney list three (3) guns and  
23 "Additionally, there I at least one firearm listed on a bill of sale that matches a firearm in  
24 the government's possession."  
25

26 Of those four (4) guns, only one (1) is the .380. Why did Kelly fail to mention the other  
27 two (2), or maybe three (3) ? After all, there was nothing unique about the .380 sale to  
28 distinguish it from the others.

1 ANSWER: Kelly states in that Affidavit he needs to pay off personal debts. He was  
2 intending to deceive the Court into releasing everything he could get his hands on from  
3 the ATF seizure. Had the U.S. Attorney not listed these additional firearms, Karalis  
4 would have missed the fraud. Carn would have fraudulently induced the Court to release  
5 guns which Karalis had title to (provable by the Bills of Sale in the civil Complaint) to  
6 his sons to convert to their own use. *(This is incredible—Carn is on a Bail status and yet  
7 makes this final try to steal guns from Karalis).*

8 Again, Karalis believes that Carn's earlier motion (Doc. #30) was a fraud upon the Court  
9 and upon Karalis. Carn sought to smokescreen the theft of seven (7) guns by focusing on  
10 the .380—the only gun he had not (yet) stolen. He probably believed that Karalis would  
11 not realize this plan. Carn would then liquidate all the guns seized—through his corrupt  
12 family business which still holds a Class 3 ATF license—and sell them to pocket the  
13 money. Probably he would then file bankruptcy. Plaintiff Karalis would be left with two  
14 (2) destitute defendants and no recovery (beyond the .380, assuming Carn has not already  
15 sold that gun three times over).

16 That .380 gun was one of the least expensive, costing Plaintiff \$3500 (See Complaint  
17 Doc. #1, Exh. D, in #2:12-cv-694, which exhibit is a Carn-generated second page to one  
18 of the Bills of Sale). This was Kelly's effort to "throw Karalis a Bone", transferring to  
19 Karalis a *de minimis* \$ 3500 item out of the \$ 99,180 he pocketed, and reflects a  
20 Defendant with no remorse.

21  
22 *And all this while on Bail status.*  
23  
24

25 **THE (01-31-14) GLADDING DECISION SUPPORTS KARALIS'S RIGHT TO**  
26 **INSPECT ATF SEIZURES TO IDENTIFY HIS ITEMS.**

27 On 1-31-14, the Ninth Circuit published the (3-0) opinion in *U.S. v. Gladding* (CA 9  
28 docket # 12-10544).

1 This was discussed at length in Karalis's REPLY TO DEFENDANT'S OPPOSITION  
2 "RDO") (served 1-26-15).

3 It is critical that Karalis be allowed to access the ATF vault with photos in hand.

4 Review the Karalis "RDO" (1-26-15) at page 6 regarding the "GERMAN MP-40". Carn  
5 sold Karalis a GERMAN MP-40 for \$ 16,000 (Complaint, *supra*, at Exh. D), but the  
6 serial number ws not on that Exhibit D. The gun was *fully* prepaid, however.

7  
8 Now, looking at the ATF seizure inventory appended to Carn's 41(g) motion (Doc. #30  
9 herein), we see a make and model gun of the same description, but with a serial number.

10  
11 Could this be one of Karalis's missing guns ? Quite possibly. Karalis should have 41(g)  
12 access to the ATF vault to compare his photos to the scratches, dents, tool marks, etc.  
13 (which make a gun as identifiable as a fingerprint) to see if the ATF seized gun is one he  
14 photographed when he purchased it. *FREvid.* 901(b)(4) permits tool marks and the like to  
15 serve as a basis for identification.

16  
17  
18 **"EQUITY ABHORS A FORFEITURE." THE "CALLOUS DISREGARD"**  
19 **REQUIREMENT IS PROBLEMATIC. TO THE EXTENT IT EXISTS, KARALIS**  
20 **HAS MET THE REQUIREMENT.**

21  
22 This was discussed in the RDO. The fact that the United States assumed the guns belong  
23 to defendants and never issued a notice to Karalis to claim their return under a forfeiture  
24 proceeding proves that the is urging yet another act of "callous disregard". Recall also,  
25 Karalis's citation of *Fuentes v Shevin*.



**KARALIS HAS MADE A PRIMA FACIE SHOWING OF ENTITLEMENT TO \$ 99,180.00 PAYABLE TO KARALIS, PAYMENT TO BE MADE IN THE FORM OF MONIES, GUNS, OR SUBSTITUTED GOODS ("COVER") TO BE RELEASED FROM THE ATF SEIZURE CACHE.**

A claimant typically makes a *prima facie* case of lawful entitlement by asserting an ownership interest of the seized property. *U.S. v Rodriguez-Aguirre* (CA 10, 2001) 264 F.3d 1195, 1205. The cashed checks totaling \$ 99,180 and the defendant-issued Bills of Sale --which are exhibits in Plaintiff Karalis's complaint (Doc. #1 in 2:12-cv-694--)) establish a *prima facie* case of entitlement in eight (8) guns, four (4) Beta .223 magazines, with some (*de minimis*) monetary "change" left over.

**In reviewing this case last year, Judge Gordon Judge Gordon made observations consistent with Plaintiff's position that he will probably prevail on the merits. These appear in a Reporter's Transcript (Doc. # 110 in #2:12-cv-694), at the following: page 5/L 13; 6/L 3-14; 13/ L 1; 14/L 5- 16 (even Mr. Van admits a Bailment could be involved); 23/ L 19 (Judge states he read (Plaintiff's "pleadings, you did a good job of presenting them and I've read them several times....". The Judge stated he could see no defense.**

**THE 41(g) TRIBUNAL IS AVAILABLE TO KARALIS.**

The USRM at page 4 argues that this "court should defer to the civil case." Karalis extensively argued this point in his REPLY (OF SEIZED OWNER KARALIS TO DEFENDANT'S OPPOSITION ('RDO" of 1-26-15).

Recall that in *Fuentes v Shevin*, the claimant was afforded a forfeiture hearing, even though she, in every likelihood, could have filed a civil complaint in a U.S. District

Court. The U.S. Supreme Court held that she did not have to, and remanded the case for a forfeiture hearing. Karalis stands in the claimant's shoes.

**CARN HAS NO STANDING TO CLAIM ANY GUNS OTHER THAN THE FEW HE PERSONALLY OWNS.**

In Doc. #30, page 5, the Carn Affidavit at Parag. 4(a) asks return of "All items listed on Exhibit G, as belonging to The Gun Vault, Inc. or myself, should be turned over to my sons...."

But the 41(g) Motion (Doc. #30 was filed *only* for Kelly Carn as an *individual*: 'Comes now, Defendant Kelly Carn....' The Gun Vault, Inc., did not make this motion.

Therefore, since the Gun Vault, Inc. never moved for 41(g) relief in Doc. #30, it is not a party (at all), and therefore no guns must be released to that corporation.

**ANY DOUBTS SHOULD BE RESOLVED *PRO TEMPORE* BY MAINTAINING THE STATUS QUO, THEREBY ALLOWING ATF TO CONTINUE RETAINING THE ENTIRE SEIZED CACHE.**

The commingling *supra* betrays how defendant Carn treats the Gun Vault, Inc. --already closed corporation-- as an *alter ego*, and not as a stand-apart corporation, in his crimes. The entire family is corrupt, and Carn Sr.'s actions are inextricably intertwined with those of his sons Joseph and Kelly, Jr.

As the Carn Affidavit shows, (Id., at Page 6, and counsel Perry's argument at Page 2 [parag. 8]). Perry states, "Mr. Carn has made arrangements to have the guns belonging to The Gun Vault, Inc. and to him personally turned over jointly to their designees...." *Such 41(g) relief would enable further acts of larceny.*

1 Karalis is willing to wait until all criminal and civil proceeding are finalized, rather than  
2 to allow any guns to be prematurely released to Kelly Carn, his sons, or the well-oiled  
3 criminal enterprise known as Gun Vault. The Public also does not need a perjurious  
4 family trafficking in machine guns.

5  
6 The United States Attorney is absolutely justified in arguing previously (Doc. #33) that a  
7 release of guns to Carn or his privies is a risk.

8  
9  
10 **WHEREFORE, MOVANT PRAYS HIS 41(g) MOTION BE**  
11 **GRANTED.**

12  
13  
14 Respectfully submitted,

15   
16 \_\_\_\_\_

Dated: 1-28-15

17 GEORGE DEMETRIUS KARALIS  
18  
19  
20

21 ///

22  
23  
24 ///

**CERTIFICATE OF SERVICE BY MAIL**

I, Florence NG reside at 233 el camino del mar, San Francisco, CA 94121-1114.  
I am over the age of 21 years, and not a party to the within action. On 1-29,  
2015, I served by mail true copies of Plaintiff's

REPLY (OF SEIZED PROPERTY OWNER KARALIS)  
TO UNITED STATES RESPONSE (Doc. #54)  
TO (KARALIS) MOTION (Doc. #46) UNDER  
FR Crim. P. 41(g).

in the matter of *U.S.A. vs. Kelly D. Carn* (U.S. District Court Nevada # 2:13-cr--346-  
KJD-GWF), by depositing same in a mailing receptacle maintained for receiving  
mailables and regularly maintained by the United States Postal Service. I deposited the  
above documents in a sealed envelope, first-class postage thereon fully prepaid,  
addressed as follows:

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Daniel G. Bogen, United States Attorney  
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Las Vegas, NV 89101

I declare under penalty of perjury that the foregoing is true and correct, and that  
this declaration was executed in San Francisco City and County, State of California,  
on 1-29, 2015.

  
Declarant